Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. No. L-29981 April 30, 1971

EUSEBIO S. MILLAR, petitioner,
vs.
THE HON. COURT OF APPEALS and ANTONIO P. GABRIEL, respondents.

Fernandez Law Office and Millar and Esguerra for petitioner.

Francisco de la Fuente for respondents.

CASTRO, *J.:*

On February 11, 1956, Eusebio S. Millar (hereinafter referred to as the petitioner) obtained a favorable judgment from the Court of First Instance of Manila, in civil case 27116, condemning Antonio P. Gabriel (hereinafter referred to as the respondent) to pay him the sum of P1,746.98 with interest at 12% per annum from the date of the filing of the complaint, the sum of P400 as attorney's fees, and the costs of suit. From the said judgment, the respondent appealed to the Court of Appeals which, however, dismissed the appeal on January 11, 1957.

Subsequently, on February 15, 1957, after remand by the Court of Appeals of the case, the petitioner moved *ex parte* in the court of origin for the issuance of the corresponding writ of execution to enforce the judgment. Acting upon the motion, the lower court issued the writ of execution applied for, on the basis of which the sheriff of Manila seized the respondent's Willy's Ford jeep (with motor no. B-192297 and plate no. 7225, Manila, 1956).

The respondent, however, pleaded with the petitioner to release the jeep under an arrangement whereby the respondent, to secure the payment of the judgement debt, agreed to mortgage the vehicle in favor of the petitioner. The petitioner agreed to the arrangement; thus, the parties, on February 22, 1957, executed a chattel mortgage on the jeep, stipulating, *inter alia*, that

> This mortgage is given as security for the payment to the said EUSEBIO S. MILLAR, mortgagee, of the judgment and other incidental expenses in Civil Case No. 27116 of the Court of First Instance of Manila against Antonio P. Gabriel, MORTGAGOR, in the amount of ONE THOUSAND SEVEN HUNDRED (P1,700.00) PESOS, Philippine currency, which MORTGAGOR agrees to pay as follows:
>
> March 31, 1957 — EIGHT HUNDRED FIFTY (P850) PESOS;
>
> April 30, 1957 — EIGHT HUNDRED FIFTY (P850.00) PESOS.

Upon failure of the respondent to pay the first installment due on March 31, 1957, the petitioner obtained an alias writ of execution. This writ which the sheriff served on the respondent only on May 30, 1957 — after the lapse of the entire period stipulated in the chattel mortgage for the respondent to comply with his obligation — was returned unsatisfied.

So on July 17, 1957 and on various dates thereafter, the lower court, at the instance of the petitioner, issued several *alias* writs, which writs the sheriff also returned unsatisfied. On September 20, 1961, the petitioner obtained a fifth *alias* writ of execution. Pursuant to this last writ, the sheriff levied on certain personal properties belonging to the respondent, and then scheduled them for execution sale.

However, on November 10, 1961, the respondent filed an urgent motion for the suspension of the execution sale on the ground of payment of the judgment obligation. The lower court, on November 11, 1961, ordered the suspension of the execution sole to afford the respondent the opportunity to prove his allegation of payment of

the judgment debt, and set the matter for hearing on November 25, 1961. After hearing, the lower court, on January 25, 1962, issued an order the dispositive portion of which reads:

IN VIEW WHEREOF, execution reiterated for P1,700.00 plus costs of execution.

The lower court ruled that novation had taken place, and that the parties had executed the chattel mortgage only "to secure or get better security for the judgment.

The respondent duly appealed the aforesaid order to the Court of Appeals, which set aside the order of execution in a decision rendered on October 17, 1968, holding that the subsequent agreement of the parties impliedly novated the judgment obligation in civil case 27116.

The appellate court stated that the following circumstances sufficiently demonstrate the incompatibility between the judgment debt and the obligation embodied in the deed of chattel mortgage, warranting a conclusion of implied novation:

1. Whereas the judgment orders the respondent to pay the petitioner the sum of P1,746.98 with interest at 12% per annum from the filing of the complaint, plus the amount of P400 and the costs of suit, the deed of chattel mortgage limits the principal obligation of the respondent to P1,700;

2. Whereas the judgment mentions no specific mode of payment of the amount due to the petitioner, the deed of chattel mortgage stipulates payment of the sum of P1,700 in two equal installments;

3. Whereas the judgment makes no mention of damages, the deed of chattel mortgage obligates the respondent to pay liquidated damages in the amount of P300 in case of default on his part; and

4. Whereas the judgment debt was unsecured, the chattel mortgage, which may be foreclosed extrajudicially in case of default, secured the obligation.

On November 26, 1968, the petitioner moved for reconsideration of the appellate court's decision, which motion the Court of Appeals denied in its resolution of December 7, 1968. Hence, the present petition for *certiorari* to review the decision of the Court of Appeals, seeking reversal of the appellate court's decision and affirmance of the order of the lower court.

Resolution of the controversy posed by the petition at bar hinges entirely on a determination of whether or not the subsequent agreement of the parties as embodied in the deed of chattel mortgage impliedly novated the judgment obligation in civil case 27116. The Court of Appeals, in arriving at the conclusion that implied novation has taken place, took into account the four circumstances heretofore already adverted to as indicative of the incompatibility between the judgment debt and the principal obligation under the deed of chattel mortgage.

1. Anent the first circumstance, the petitioner argues that this does not constitute a circumstance in implying novation of the judgment debt, stating that in the *interim* — from the time of the rendition of the judgment in civil case 27116 to the time of the execution of the deed of chattel mortgage — the respondent made partial payments, necessarily resulting in the lesser sum stated in the deed of chattel mortgage. He adds that on record appears the admission by both parties of the partial payments made before the execution of the deed of chattel mortgage. The erroneous conclusion arrived at by the Court of Appeals, the petitioner argues, creates the wrong impression that the execution of the deed of chattel mortgage provided the consideration or the reason for the reduced judgment indebtedness.

Where the new obligation merely reiterates or ratifies the old obligation, although the former effects but minor alterations or slight modifications with respect to the cause or object or conditions of he latter, such changes do not effectuate any substantial incompatibility between the two obligations Only those essential and principal changes introduced by the new obligation producing an alteration or modification of the essence of the old obligation result in implied novation. In the case at bar, the mere reduction of the amount due in no sense constitutes a sufficient *indictum* of incompatibility, especially in the light of (a) the explanation by the petitioner that the reduced indebtedness was the result of the partial payments made by the respondent before the execution of the chattel mortgage agreement and (b) the latter's admissions bearing thereon.

At best, the deed of chattel mortgage simply specified exactly how much the respondent still owed the petitioner by virtue of the judgment in civil case 27116. The parties apparently in their desire to avoid any future confusion as to the amounts already paid and as to the sum still due, decoded to state with specificity in the deed of chattel mortgage only the balance of the judgment debt properly collectible from the respondent. All told, therefore, the first circumstance fails to satisfy the test of substantial and complete incompatibility between the judgment debt an the pecuniary liability of the respondent under the chattel mortgage agreement.

2. The petitioner also alleges that the third circumstance, considered by the Court of Appeals as indicative of incompatibility, is directly contrary to the admissions of the respondent and is without any factual basis. The

appellate court pointed out that while the judgment made no mention of payment of damages, the deed of chattel mortgage stipulated the payment of liquidated damages in the amount of P300 in case of default on the part of the respondent.

However, the petitioner contends that the respondent himself in his brief filed with the Court of Appeals admitted his obligation, under the deed of chattel mortgage, to pay the amount of P300 by way of attorney's fees and not as liquidated damages. Similarly, the judgment makes mention of the payment of the sum of P400 as attorney's fees and omits any reference to liquidated damages.

The discrepancy between the amount of P400 and tile sum of P300 fixed as attorney's fees in the judgment and the deed of chattel mortgage, respectively, is explained by the petitioner, thus: the partial payments made by the respondent before the execution of the chattel mortgage agreement were applied in satisfaction of part of the judgment debt and of part of the attorney's fee fixed in the judgment, thereby reducing both amounts.

At all events, in the absence of clear and convincing proof showing that the parties, in stipulating the payment of P300 as attorney's fees in the deed of chattel mortgage, intended the same as an obligation for the payment of liquidated damages in case of default on the part of the respondent, we find it difficult to agree with the conclusion reached by the Court of Appeals.

3. As to the second and fourth circumstances relied upon by the Court of Appeals in holding that the montage obligation superseded, through implied novation, the judgment debt, the petitioner points out that the appellate court considered said circumstances in a way not in accordance with law or accepted jurisprudence. The appellate court stated that while the judgment specified no mode for the payment of the judgment debt, the deed of chattel mortgage provided for the payment of the amount fixed therein in two equal installments.

On this point, we see no substantial incompatibility between the mortgage obligation and the judgment liability of the respondent sufficient to justify a conclusion of implied novation. The stipulation for the payment of the obligation under the terms of the deed of chattel mortgage serves only to provide an express and specific method for its extinguishment — payment in two equal installments. The chattel mortgage simply gave the respondent a method and more time to enable him to fully satisfy the judgment indebtedness. [1] The chattel mortgage agreement in no manner introduced any substantial modification or alteration of the judgment. Instead of extinguishing the obligation of the respondent arising from the judgment, the deed of chattel mortgage expressly ratified and confirmed the existence of the same, amplifying only the mode and period for compliance by the respondent.

The Court of Appeals also considered the terms of the deed of chattel mortgage incompatible with the judgment because the chattel mortgage secured the obligation under the deed, whereas the obligation under the judgment was unsecured. The petitioner argues that the deed of chattel agreement clearly shows that the parties agreed upon the chattel mortgage solely to secure, not the payment of the reduced amount as fixed in the aforesaid deed, but the payment of the judgment obligation and other incidental expenses in civil case 27116.

The unmistakable terms of the deed of chattel mortgage reveal that the parties constituted the chattel mortgage purposely to secure the satisfaction of the then existing liability of the respondent arising from the judgment against him in civil case 27116. As a security for the payment of the judgment obligation, the chattel mortgage agreement effectuated no substantial alteration in the liability of the respondent.

The defense of implied novation requires clear and convincing proof of complete incompatibility between the two obligations. [2] The law requires no specific form for an effective novation by implication. The test is whether the two obligations can stand together. If they cannot, incompatibility arises, and the second obligation novates the first. If they can stand together, no incompatibility results and novation does not take place.

We do not see any substantial incompatibility between the two obligations as to warrant a finding of an implied novation. Nor do we find satisfactory proof showing that the parties, by explicit terms, intended the full discharge of the respondent's liability under the judgment by the obligation assumed under the terms of the deed of chattel mortgage so as to justify a finding of express novation.

ACCORDINGLY, the decision of the Court of Appeals of October 17, 1968 is set aside, and the order of the Court of First Instance of Manila of January 25, 1962 is affirmed, at respondent Antonio Gabriel's cost.

Concepcion, C. J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Fernando and Makasiar, JJ., concur.

Villamor, J., abstains.

Separate Opinions

BARREDO, *J.,* concurring:

I concur. I would like to add the following considerations to the rationale of the main opinion:

As evidenced by the express terms of the chattel mortgage by repondent Gabriel in favor of petitioner Millar, it was unmistakably the intent of the parties that the said mortgage be merely a "security for the payment to the said Eusebio Millar, mortgagee, of the judgment and other incidental expenses in Civil Case No. 27116 of the Court of First Instance of Manila against Antonio P. Gabriel, mortgagor," to be paid in the amount and manner therein stated. If this can in any sense in which the parties must be held to have newly bound themselves. In other words, by their explicit covenant, the parties contemplated the chattel mortgage to be a security for the payment of the judgment and not the payment itself thereof. Such being the case, and it appearing that respondent Gabriel has not paid the judgment remains unimpaired in its full existence and vigor, and the resort to the execution thereof thru the ordinary procedure of a writ of execution by the petitioner is an election to which every mortgage creditor is entitled when he decides to abandon his security.

Teehankee, J., concurs.

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Teehankee, J., concurs.

Footnotes

1 Zapanta v. De Rotaeche, 21 Phil. 154.

2 Magdalena Estates, inc. v. Rodriguez and Rodriguez, L18411, Dec. 17, 1966, 18 SCRA 967; Guerrero v. Court of Appeals and Alto Surety & Insurance Co., Inc., L-22366, Oct. 30, 1969, 29 SCRA 791.

BACK TOP